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May 5, 2008

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 25, 2007

Case Number: TSO-0554

This Decision concerns the eligibility of xxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." Based on the record before me, I have determined that the individual's access authorization should not be granted at this time.

**I. Procedural Background**

The individual is employed at a DOE facility where his work requires him to have an access authorization. The local DOE security office issued a Notification Letter to the individual on August 2, 2007. The Notification Letter alleges under 10 C.F.R. § 710.8(j) that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

The security concerns in the Notification Letter are based on the following factual allegations. The individual has been arrested for Driving While Intoxicated (DWI) on three separate occasions: October 1998, September 2002, and December 2005. In addition, the individual was arrested in 1999 for battery and fighting in public after becoming intoxicated. After examining the individual on May 25, 2007, a DOE consultant-psychiatrist (DOE psychiatrist) diagnosed the him as having Alcohol Dependence. 2/

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1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

2/ With respect to Criterion J, the Notification Letter also stated that the individual completed a May 2006 Questionnaire for National Security Positions (QNSP), in which he answered "yes" to the question, "Have you ever been charged with or convicted of any offense related to alcohol or drugs?" However, the individual listed only his 2005 DWI. DOE did not raise this response as a falsification issue, but rather included it as a concern related to alcohol.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns raised in the Notification Letter. DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case.

At the hearing that I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual called two witnesses: his wife and a co-worker. He also testified on his own behalf. The DOE submitted a number of written exhibits prior to the hearing. The individual submitted one exhibit during the hearing.

## **II. Standard of Review**

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render an opinion based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). In the present case, the individual has not convinced me that granting his security clearance would not endanger the common defense and security and would clearly be in the national interest.

## **III. Findings of Fact**

The relevant facts in this case are uncontested. The individual began drinking alcohol at the age of 14. According to the individual, he drank vodka until he vomited and passed out. He also reported that he drank to the point where his skin would burn from alcohol poisoning. Since that time, the individual has been arrested three times and charged with DWI. The individual's first DWI occurred in October 1998. According to the record, the individual drank a six-pack of beer over three or four

hours while out socializing with his brother-in-law. After going for a ride, the two were stopped by police because the car was swerving. The individual was arrested and spent one night in jail. In May 1999, the individual was arrested for battery and fighting in public. According to the individual, he was at a party and got into a fight with a neighbor over a girl. The individual reported that he was "lightly intoxicated" from drinking beer.

The individual's second DWI occurred in September 2002. On this occasion, the individual had consumed a six-pack of beer at a club before getting behind the wheel of his car. His car was later stopped when he passed another car in a no-pass zone. The police officer administered a breathalyzer test after stopping the vehicle on suspicion of alcohol use. The individual's Blood Alcohol Content (BAC) registered at .10.

In December 2005, the individual was arrested a third time for DWI after consuming six to ten beers at a work-related holiday party. According to the individual, after feeling flu-like symptoms, he took some cold medicine, drove home and fell asleep at the wheel. The individual was arrested after wrecking his car. His BAC registered at .08. However, the individual attributed this incident to the cold medicine and not the alcohol he consumed at the party. As a result of the arrest, the individual was charged with DWI, fined \$750 and was referred for treatment. He also lost his license for six months. The court ordered the individual to participate in eight weeks of an outpatient alcohol treatment program at a local hospital after his third DWI arrest. During the course of the treatment, the individual was evaluated and diagnosed as suffering from alcohol abuse.

In May 2006, the individual's employer requested an access authorization for him. In connection with his application for an access authorization, the individual completed a QNSP on May 25, 2006, in which he revealed his alcohol-related arrests and other derogatory information related to his alcohol use. On August 29, 2006, the local DOE Security office conducted a Personnel Security Interview (PSI) with the individual. During the course of this interview, the individual reported that he was sober during the alcohol treatment program he attended, but resumed the use of alcohol when the treatment ended. Specifically, the individual stated that he limits his alcohol consumption to one or two beers during the week and three to ten beers on the weekends. The individual also indicated that he last consumed alcohol the Friday before the PSI, and that he was last intoxicated a month and a half prior to the interview. He stated that he sometimes drank more than he intended to drink.

The individual's three DWIs prompted the DOE to refer the individual to a DOE psychiatrist. The DOE psychiatrist evaluated the individual on May 25, 2007, and issued his report on June 2, 2007. He concluded that the individual suffers from Alcohol Dependence, opining that the individual satisfied three of the seven criteria for that illness listed in the *Diagnostic and Statistical Manual of Mental Disorders*, DSM-IV TR (DSM-IV TR). The DOE psychiatrist found that the individual has a history of drinking up to loss of consciousness, has a history of tolerance (drinking up to twelve beers on occasion), has a history of trying to cut down and control his alcohol use, has recurrent legal problems related to alcohol and has relational problems with a significant other related to alcohol.

## **IV. Analysis**

### **A. Security Concerns Cited Under 10 C.F.R. § 710.8(j)**

The Notification Letter states in relevant part, that the individual “has been diagnosed by a psychiatrist . . . as alcohol dependent.” See 10 C.F.R. § 710.8(j). The Notification Letter indicates that the individual has been arrested for DWI on three separate occasions in the past.

This derogatory information creates serious security concerns about the individual. First, a condition such as Alcohol Dependence can impair a person’s judgment, reliability and trustworthiness. See Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person’s reliability and trustworthiness. See *id.* at Guideline G. I therefore find that the DOE properly invoked Criterion J.

### **B. Mitigation of Criterion J Concerns**

#### **1. Lay Testimony**

The individual maintains that there are mitigating factors that alleviate the agency’s security concerns and justify the granting of his security clearance. In support of his position, the individual acknowledges that he had a problem with alcohol in the past, but does not believe that he has a problem with alcohol now. Transcript of Hearing (Tr.) at 26. The individual testified that he was very young when he was charged with three DWIs. *Id.* at 24, 26. He also testified that his attitude has changed since his arrests and stated that when he was younger, “[he] didn’t really care about anything and was into partying.” *Id.* at 24. The individual stated that he loves his job and his country and would not do anything foolish to jeopardize security. *Id.* at 26. According to the individual, he currently consumes three to five beers during an entire weekend and he does not drink during the week.

He stated that he is trying to “cut down” on his alcohol consumption, adding that he eventually plans on totally abstaining from alcohol. *Id.* at 24. The individual further testified that his concern for his young son has contributed to his desire to decrease his alcohol consumption. *Id.* at 23. He testified that after completing the outpatient alcohol treatment program following his 2005 DWI, he was never told that he needed further treatment, other than being told that he should “sit-in” on a couple of Alcoholics Anonymous (AA) classes. *Id.* at 25. The individual testified that he thought about attending another treatment program, but stated that he “never got around to it.” *Id.* at 23. He indicated that he is willing to join AA if it will help him. *Id.* at 24.

A co-worker testified that she has known the individual for about two and one-half years and has socialized with him both at the job and outside of work. *Id.* at 9-10. She stated that she has never seen the individual consume alcohol on the job, but recalled that the individual consumed alcohol

at a 2006 Christmas party outside of work. *Id.* She testified that the individual only consumed a few drinks as did the other party attendees. *Id.* The co-worker further testified that the individual has matured since his last DWI in 2005. *Id.* She described him as a very reliable person. *Id.* at 12.

The wife testified that she has known the individual since 1999 when he was 20 years old and has been married to the individual for two months. *Id.* at 13. She testified that she has observed the individual consuming alcohol and has seen him become intoxicated. *Id.* at 14. The wife stated that alcohol has never affected his work. However, she indicated that alcohol has been a “minor irritation” in their relationship because she had to drive the individual to work for six months when he lost his license after his last DWI. *Id.* at 15. The wife further testified that the individual has “drastically” changed since she met him in 1999. *Id.* at 14. She stated that the individual very rarely drinks alcohol now. *Id.* Specifically, the wife testified that the individual currently consumes about three to five beers only on the weekends, and described his drinking as being “on the lighter side of moderation.” *Id.* at 15 and 19. She added that the individual does not drive after drinking. *Id.* at 18.

## **2. Expert Testimony**

The DOE psychiatrist testified that he evaluated the individual in May 2007. After reviewing the individual’s psychiatric, addiction, and social histories and conducting an evaluation, the DOE psychiatrist concluded in the psychiatric report, and reaffirmed at the hearing, that the individual met the criteria set forth in the DSM-IV TR for Alcohol Dependence. DOE Exhibit 5. The DOE psychiatrist found that the individual met three of the seven criteria for Alcohol Dependence: (1) tolerance; (2) excessive use; and (3) impaired control. *Id.* The DOE psychiatrist also found that the individual had recurrent legal issues, i.e., three DWIs, and problems with his significant other. *Id.* During the hearing, the DOE psychiatrist explained that “tolerance means that you could drink more than the average person to get the same effect and drinking . . . two to four drinks on occasion would show tolerance.” Tr. at 32. He testified that the individual demonstrated a history of tolerance by drinking up to six beers on at least two occasions over the last six months, and also by drinking up to a 12-pack of beer on occasions in the last few years. *Id.* at 32 and 36.

The DOE psychiatrist further testified that he did not make any recommendations for treatment in his report because he did not enter into a doctor/patient relationship with the individual. *Id.* at 35. However, when questioned about the kind of treatment he would recommend for the individual in order to be considered rehabilitated, he testified that he would recommend formal outpatient alcohol treatment and at least six months of sobriety. *Id.* at 37. The DOE psychiatrist added that in the individual’s case, with a history of multiple DWIs and a short period of treatment, AA would not be sufficient. *Id.* at 38. He further added that the individual should be monitored in an outpatient setting, “including breathalyzers, more education and involvement in sober support.” *Id.*

### **3. Hearing Officer's Evaluation of the Evidence**

In the administrative process, it is the Hearing Officer who has the responsibility for assessing whether an individual with alcohol problems has presented sufficient evidence of rehabilitation or reformation. See 10 C.F.R. § 710.27. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. See, e.g., *Personnel Security Hearing* (Case No. TSO-0350), 29 DOE ¶ 82,948 (2006) (finding of rehabilitation from alcohol abuse under Criteria J); *Personnel Security Hearing* (Case No. TSO-0223), 29 DOE ¶ 82,856 (2005) (finding of no rehabilitation from alcohol abuse under Criteria J). Moreover, it is my responsibility as Hearing Officer to ascertain whether the factual basis underlying the psychiatric diagnosis is accurate, and whether the diagnosis provides sufficient grounds, given all the other information in the record, for the denial of a security clearance. See, e.g., *Personnel Security Hearing* (Case No. VSO-0068), 25 DOE ¶ 82,804 (1996). Since the individual provided no countervailing expert testimony in this case, I will defer to the opinion of the DOE psychiatrist and find the individual suffers from Alcohol Dependence.

Regarding rehabilitation and reformation, I gave considerable weight to the opinion of the DOE psychiatrist who opined that the individual needed alcohol treatment and at least six months of sobriety in order to achieve rehabilitation and reformation. Moreover, from a common sense perspective, the following factors militate against granting the individual access authorization. First, although the individual acknowledged that he had a problem with alcohol in the past, he does not believe he currently has a problem with alcohol. He also appeared at the hearing to minimize his three DWIs by attributing them to youth and immaturity. However, his last DWI occurred in 2005 when the individual was 27 years old, a mature adult. I, therefore, do not believe the individual recognizes the seriousness of his alcohol problem. Second, the individual began drinking at a very young age and has had recurrent legal problems, i.e., three DWIs, as a result of alcohol consumption. Other than the two-month court-ordered treatment program he attended after his 2005 DWI, the individual has not sought any kind of additional alcohol treatment or support such as AA. Nor has the individual maintained sobriety. In fact, the individual resumed drinking immediately after his treatment in 2005 and continues to drink alcohol now. Again, I agree with the DOE psychiatrist that the individual should seek outpatient alcohol treatment and should achieve a significant period of sobriety in order to be considered rehabilitated or reformed. The record clearly supports the DOE psychiatrist's judgment and conclusion. Consequently, I must find that the individual has not yet overcome the security concerns associated with his use of alcohol. See *Personnel Security Hearing*, (Case No. VSO-0359), 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, (Case No. TSO-0011), 28 DOE ¶ 82,912 (2003); *cf.* *Personnel Security Hearing* (Case No. TSO-0001), 28 DOE ¶ 82,911 (2003).

### **V. Conclusion**

As explained in this Decision, I find that the local DOE Security office properly invoked 10 C.F.R. § 710.8(j) in denying the individual's access authorization. For the reasons described above, I find that the individual has failed to sufficiently mitigate the security concerns associated with his use of alcohol. I am therefore unable to find that granting the individual's access authorization would not

endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be granted at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman  
Hearing Officer  
Office of Hearings and Appeals

Date: May 5, 2008